vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4268 OF 2001

Maharashtra State Road
Transport Corporation
Vahatuk Bhavan, Dr.A.Nair Marg
Bellasis Road, Bombay Central
Bombay ... Petitioners

V/s.

Maharashtra S.T. Kamgar Sanghatana
B-18, Megdoot Shopping Centre
Opp. E.B.S. Nashik
through the Divisional Secretary ... Respondent

Mr.G.S. Hegde for Petitioners
Mr.M.S. Karnik for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 20, 2005**

ORAL JUDGMENT:

. This Petition challenges the order of the Industrial Court passed in the complaint filed by the Respondent under Item 9 of Schedule IV of the MRTU & PULP Act.

2. The Petitioners contend that a chargesheet was issued to the respondent-workman on 29.7.1994 for certain acts of misconduct including illegal withdrawal of certain amounts from Provident Fund accounts in the name of one M.D. Jadhav. The Petitioners detected that

there was no such person on their rolls and therefore, a chargesheet was issued to the respondent alleging that he had permitted six such withdrawals within a span of two months. An enquiry was held against the respondent and the enquiry officer found him guilty. The Petitioners imposed a punishment of reducing the basic wages by three stages with cumulative effect. Aggrieved by this decision, the respondent filed a complaint in the Industrial Court under Item 9 of Schedule IV of the MRTU & PULP Act. The Industrial Court has found that the enquiry conducted against the respondent was fair and proper and that the findings were not perverse. However, the Industrial Court was of the view that the punishment imposed on the respondent was shockingly harsh and disproportionate. Accordingly, the Industrial Court held that an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act had been committed by the Petitioners. The Industrial Court directed that the punishment should be modified and the respondent should be denied the increments for three stages for one year without cumulative effect. In addition, the Industrial Court directed that a simple warning should be issued to the respondent. This punishment was imposed by the Industrial Court since it was of the view that the respondent was guilty of the negligence he could not be blamed for the entire episode.

Furthermore, the Industrial Court found that the punishment was not awarded within the provisions of the Disciplinary Appeal procedure applicable to the employees of the Corporation and on this basis, it held that there should be a reduction in basic wages for three stages for a period of one year.

3. In my view, the submissions of Mr.Hegde challenging the order of the Industrial Court are valid. An amount of Rs.25,000/- to Rs.30,000/- was withdrawn in the name of one M.D. Jadhav. The Industrial Court has found that although there was no such person, it was possible that the respondent had mistaken him for one M.S. Jadhav who was an employee of the Corporation. The respondent accordingly allowed withdrawal of these amounts when the application was submitted. However, the Industrial Court has held that the Respondent was not directly connected with the payment nor had he gainfully benefited.

4. These findings of the Industrial Court are unsustainable. The Industrial Court has rightly found that there is negligence on the part of the respondent. Therefore, interference by the Industrial Court with the punishment imposed by the Corporation was not warranted for more than one reason. Firstly, it was the duty of

the respondent to ascertain whether such a person was on the rolls of the Corporation. Furthermore, it was necessary for the respondent to consider whether six withdrawals within a span of two months could be permitted to an employee. Assuming that it was only because of Respondent's negligence and not misappropriation, that the amount was withdrawn, it would not absolve the Respondent of his responsibility. The Respondent being the Accountant, it was his duty to ascertain whether the withdrawls sought by the workmen from their Provident Fund accounts were genuine.

5. In such circumstances, I have no hesitation in setting aside the order of the Industrial Court and upholding the punishment imposed by the Petitioner-Corporation. Rule is, thus, made absolute. No costs.